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Debt-For-Nature Evolves: The Enterprise for the Americas Initiative

"Debt-for-nature"—what a simple and alluring symmetry is suggested in those words.

William K. Reilly, Debt-for-Nature Swaps: The Time Has Come[1]

I. INTRODUCTION

Following the example of debt-for-nature swaps pioneered by international conservation organizations, the US government has begun a program to exchange developing-country debt for environmental protection.[2] This program, the Enterprise for the Americas Initiative, is a breakthrough in official recognition of the often-ignored links between debt, development, and environmental destruction.

The Initiative can dramatically increase funding for environmental protection and sustainable development in Latin America; it also can encourage participation in debt-for-nature exchanges or other debt-reduction strategies by other governments or multilateral development banks. The Initiative is good conservation, good politics, and good business; it will certainly increase environmental protection and may lead to more comprehensive solutions for the continuing developing-country debt crisis. Despite its advantages, however, the Initiative does have a negative side.

Part II of this Comment provides the backdrop for the Initiative including the growth of the debt crisis, its link to environmental destruction, the advent of privately funded debt-for-nature swaps, and the limitations of these initial efforts. Part III examines the evolution of the debt-for-nature concept as embodied in specific provisions of the Initiative. Part IV discusses current progress in implementing the Initiative. Finally, Part V assesses strengths and weaknesses of the Initiative as a whole.

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1. William K. Reilly, *Debt-for-Nature Swaps: The Time Has Come*, 2 INT'L ENVTL. AFF. 130, 134 (1990).

2. Enterprise for the Americas Initiative, 7 U.S.C. § 1738 (1991) [hereinafter Initiative].

3. Betsy Cody, CONGRESSIONAL RESEARCH SERVICE, DEBT-FOR-NATURE SWAPS IN DEVELOPING COUNTRIES: AN OVERVIEW OF RECENT CONSERVATION EFFORTS 4 (1988) [hereinafter C.R.S. REPORT].

II. DEBT AND DEBT-FOR-NATURE SWAPS

A. The Debt Crisis

Developing-country debt was recognized as a major problem in the early 1980s, when Mexico was unable to meet its international debt obligations.[3] The crisis followed "a decade-long $700 billion surge in lending to a diverse group of developing countries . . . [by] a small group of the world's largest banks, a few governments, and international agencies like the World Bank and the International Monetary Fund."[4] Lenders were glad to lend to growing countries rich in natural resources.[5] In the ensuing decade, the debt of the developing world doubled to $1.3 trillion.[6] Then economic conditions changed, and low commodity export prices and rising interest rates hampered debtor countries' efforts to make payments on their external debts.[7] Developing countries have incurred substantial debt to commercial banks and to official creditors. Official creditors include the World Bank and other multilateral development banks (MDBs)—"multilateral official debt"—and foreign governments—"bilateral official debt."

The generic term "debt crisis" disguises a host of differences among the situations of particular indebted countries and regions. For example, sub-Saharan African nations generally owe proportionally more external debt to official creditors than do other indebted nations.[8] On the other hand, much of the external debt of the Latin American and Caribbean countries is owed to private creditors.[9] Characteristics of the debt problem can vary among countries within the same region as well. Nigeria, for example, has much larger debts to private creditors than other sub-Saharan African nations.[10]

B. Debt and Development

The $1.3 trillion figure refers to external debt, defined as debt owed to nonresidents and repayable in foreign currency, goods, or services.[11] To

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4. Rudiger Dornbusch & John H. Makin, *Introduction*, in ALTERNATIVE SOLUTIONS TO DEVELOPING-COUNTRY DEBT PROBLEMS 1 (R. Dornbusch, et al. eds., 1989).

5. WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE 73 (1987) [hereinafter OUR COMMON FUTURE].

6. 1 THE WORLD BANK, WORLD DEBT TABLES 1990-91: EXTERNAL DEBT OF DEVELOPING COUNTRIES 2 (1989) [hereinafter WORLD DEBT TABLES].

7. C.R.S. REPORT, *supra* note 3, at 3, 4.

8. 1 WORLD DEBT TABLES, *supra* note 6, at 5. Of $139 billion external long-term debt projected for 1990, sub-Saharan African nations owed $100 billion to official creditors, of which $64 billion was bilateral official debt. *Id.* at 130.

9. *Id.* at 142. Of total long-term external debt of $339 billion projected for 1990, Latin American and Caribbean nations owe $202 billion to private creditors. *Id.*

10. *Id.* at 94.

11. 2 WORLD DEBT TABLES, *supra* note 6, at xiv. Typically, external debt is payable in hard currency, usually US dollars, Japanese yen, or German marks.

meet their loan obligations, debtor countries must increase exports to obtain hard currency through foreign trade. In some cases debt service takes a substantial part of export earnings. For example, in 1989, 31 percent of the export earnings of Latin American and Caribbean nations went to service external debt.[12] Because they may not have significant industrial exports, the best way for many debtor nations to increase exports is through environmentally unfriendly activities like logging, mining, or ranching.[13] The effects of these activities can be far-reaching:

> The trade in tropical timber, for example, is one factor underlying tropical deforestation. Needs for foreign exchange encourage many developing countries to cut timber faster than forests can be regenerated. This overcutting not only depletes the resource that underpins the world timber trade, it causes the loss of forest-based livelihoods, increases soil erosion and downstream flooding, and accelerates the loss of species and genetic resources.[14]

A large debt burden, then, puts pressure on a developing country's natural resources in two ways. First, the need for hard currency creates a desperate need for exports, which often must be basic commodities like lumber and minerals. Rapid development of these products causes environmental degradation. Second, servicing large external debts reduces the debtor country's ability to spend money internally to protect the environment. Although this Comment focuses on environmental problems caused by the debt crisis, it is obvious that large external debt-service obligations also hinder internal expenditures on basic human services.

C. Creation of Debt-for-Nature Swaps

Payment on external debt has periodically been suspended by some debtor nations.[15] In 1982, after Mexico announced that it could not make scheduled payments, commercial banks began to sell developing-country debt at a discount on the secondary market. This procedure allowed banks to get some return on loans that they were unsure would be repaid. Investors began to purchase the discounted debt and, rather than demanding hard currency payments, exchanged the debt for ownership interest in a debtor-nation firm or other local asset.[16] These transactions are called debt-for-

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12. 1 WORLD DEBT TABLES, *supra* note 6, at 20. President Bush, in a recent speech in Venezuela, said that "the burden of external debt weighs heavily on efforts to breathe new life into Latin American and Caribbean economies." *Remarks of President George Bush*, Fed. News Serv., Dec. 8, 1990.

13. C.R.S. REPORT, *supra* note 3, at 6.

14. OUR COMMON FUTURE, *supra* note 5, at 68.

15. R. Dornbusch and J. Makin, *supra* note 4, at 1.

16. C.R.S. REPORT, *supra* note 3, at 1. Through 1989, Chile converted $8.8 billion of debt for private equity. Recently debt-for-equity swaps have been used in Argentina to privatize nationally owned industries such as the telephone company and airline. 1 WORLD DEBT TABLES, *supra* note 6, at 7.

equity swaps, and in some ways they served as a model for debt-for-nature swaps.

In a 1984 editorial, Dr. Thomas Lovejoy, vice-president of the World Wildlife Fund, proposed that tax breaks be offered to induce commercial banks to give discounts or credits to debtor nations in exchange for their protection of forest lands.[17] Lovejoy believed that "stimulating conservation while ameliorating debt would encourage progress on both fronts."[18] Though such incentives were not offered to the banks, Conservation International, a private conservation organization, set up the first debt-for-nature swap.[19] Conservation International bought $650,000 worth of Bolivian debt for $100,000 on the secondary market—reflecting a deep discount—which it then swapped for Bolivia's agreement to increase protection of its Beni Biosphere Reserve.[20] Within one year, three other swaps had been made by the World Wildlife Fund with Costa Rica, Ecuador, and the Philippines.[21]

D. How Debt-for-Nature Works

The typical privately funded debt-for-nature swap involves a series of steps. First, an international nongovernmental organization (NGO), for example Conservation International or World Wildlife Fund, buys discounted hard currency debt on the secondary market. The NGO exchanges this debt with the debtor government for bonds payable in local currency, which are then transferred to one or more local environmental organizations. Finally, the debtor government agrees that the local groups will use the payments on the bonds to finance preservation or other environmental programs agreed upon in advance by the parties.[22] The use of bonds, rather than direct cash payments, ensures that the economy does not receive a sudden large infusion of local currency, which could cause inflation.[23]

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17. Thomas E. Lovejoy, *Aid Debtor Nations' Ecology*, N.Y. TIMES, Oct. 4, 1984, at A31, col. 1.

18. *Id.*

19. Timothy B. Hamlin, *Debt-for-Nature Swaps*, 16 ECOLOGY L.Q. 1065, 1068 (1989). The IRS did address the issue of charitable donation of developing-country debt in 1987. *See generally* Rev. Rul. 87-124, 1987-2 C.B. 205. However, the incentives offered have not been enough to induce many donations; only two have occurred under the rule. J. Eugene Gibson and Randall K. Curtis, *A Debt-for-Nature Blueprint*, 28 COLUM. J. TRANSNAT'L L. 331, 372-85 (1990).

20. C.R.S. REPORT, *supra* note 3, at 9.

21. Hamlin, *supra* note 19, at 1068.

22. *Id.* at 1069.

23. If a country agrees to a large swap and quickly increases its money supply to pay off the swapped debt, the relative value of the local currency may fall, inflating prices for goods. Conversion of the debt into local currency bonds allows interest to be paid out over a span of years, avoiding a sudden increase in the money supply. C.R.S. REPORT, *supra* note 3, at 12.

The effect is that part of the debtor country's external, hard currency debt becomes a local currency debt. Payment on this debt funds environmental programs while reducing, at least somewhat, the pressure to export commodities. Although the arrangement sounds simple enough, debt-for-nature swaps usually require long, intensive negotiations. Nevertheless, about fifteen debt-for-nature swaps have been made, involving a total of about $100 million (at face value) in external debt.[24]

E. Constraints on Debt-for-Nature Swaps

Debt-for-nature swaps are win–win deals, at least to some degree: developing nations get debt relief and environmental benefits, creditors get some return on shaky loans, and environmental groups fulfill their functions by helping to protect environmental values. However, some limiting factors do constrain debt-for-nature swaps.

1. Tension Between Sovereignty and Enforceability

Conservation organizations spend substantial sums of money on debt-for-nature swaps; thus, they naturally want some assurance that promises of environmental protection will be kept and that required payments will be made. On the other hand, perhaps the largest concern for the debtor country is the preservation of sovereignty over its own territory.[25] Control of domestic policies by foreign investors, however well-intentioned, can be seen as a form of exploitation.[26] Inevitably, there is some tension between the goals of the conservation NGO and those of the debtor government.

This is why it is so important that the local environmental programs be administered by local groups, albeit with help and supervision from the international NGO. Local conservation NGOs play a very important role in debt-for-nature swaps.[27] While the debtor government retains sovereignty, the local NGOs control expenditure of the funds.[28] The use of local NGOs puts a buffer between the international NGO and the debtor government. The international organization need not blindly trust the debtor government to implement the program as agreed; on the other hand, the government does not relinquish control of its natural resources to a foreign group. Because the debtor country will ultimately benefit from

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24. Gerrit J. Tammes, *Debt-for-Nature Conversion: What Limits Their Further Growth?*, 2 INT'L ENVTL. AFF. 153 (1990).

25. For example, the first debt-for-nature swap caused an outcry among Bolivians who mistakenly thought it involved transfer of land title to the international NGO. Although no land title actually was transferred, this example shows the importance of perception on the part of the debtor country. C.R.S. REPORT, *supra* note 3, at 23.

26. *Id.*

27. *Id.* at 17.

28. *Id.* at 24.

environmental programs financed by the local-currency bonds, it has a powerful incentive to make the payments.[29] There is no guarantee that payments will continue to be made if the political landscape changes, but continued compliance is more likely when the environmental programs are identified, selected and implemented by local NGOs.[30] Of course, local NGOs also have an advantage in that they usually know more than outside groups about their own country's needs.

2. Conflict with Indigenous People

Debtor nations may encounter opposition from indigenous people in the areas affected by a swap. This is especially true where land is set aside or its use is restricted.[31] Often isolated, such people have survived by learning to live in close harmony with the natural environment.[32] Restricting the traditional use of lands by indigenous people threatens their survival. The best approach would be to avoid the problem by consulting indigenous people from the inception of the deal, especially where a park or other reserve is to be purchased. Not all debt-for-nature swaps involve setting aside land; some anticipate sustainable-use areas where indigenous people can continue their lifestyles in a way that is compatible with the environment.[33]

3. Lack of Large-Scale Debt Relief

Debt-for-nature swaps are primarily a tool for the protection of natural resources:

> Debt-for-nature swaps are not intended to provide debt relief on any significant scale. Their objective is first and foremost to provide funding for conservation and better uses of natural resources. It is a mistake to consider these swaps in terms of a solution to the debt crisis.

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29. Hamlin, *supra* note 19, at 1087.

30. C.R.S. REPORT, *supra* note 3, at 11.

31. For example, the first swap, in Bolivia, granted logging concessions in the Chimanes Forest without consulting the indigenous Indians. The Indians demanded that the loggers withdraw and that the Indians be granted legal title to a half-million acres of forest. Conservation International conditioned its continued participation in the debt-for-nature plan on full participation by the Indians. Merrill Collett, *Bolivia Blazes Trail . . . to Where?*, CHRISTIAN SCIENCE MONITOR, July 10, 1989, at 4. A plan to include the Indians was implemented. James Painter, *Bolivian Indians Bring Forest Cause to La Paz*, THE INDEPENDENT, Sept. 23, 1990, at 10.

32. OUR COMMON FUTURE, *supra* note 5, at 114.

33. Bruce Babbitt, *Amazon Grace: No More Jungle-Busting Roads*, NEW REPUBLIC, June 25, 1990, at 18. In the case of tropical rainforests, preservation probably makes better bottom-line economic sense than destruction. One study shows that the average return from ranching in the Amazon is $87 per hectare per year, while the average return from sustainable uses such as rubber tapping, harvesting Brazil nuts, and selective logging is over $200 per hectare. *Id.*

> The largest transaction in Costa Rica is still less than 5 percent of that nation's commercial debt. . . .[34]

In the context of a $1.3 trillion debt crisis, $100 million of relief is insignificant. And although international conservation NGOs do buy debt at a discount, the money to purchase it depends on charitable contributions which are by nature a limited source.[35] Thus, meaningful reduction in the overall debt burden of severely indebted countries is out of reach for private organizations working only with commercial bank debt.

In the context of the debtor nation's budget for environmental protection, however, the amount of money involved can be significant.[36] For example, the interest alone from Costa Rican debt-for-nature swaps is several times greater than the annual budget of that country's national park service.[37] Moreover, the effect of privately funded debt-for-nature swaps cannot be measured only by the amount of debt they cancel. When a problem is perceived as intractable, a creative partial solution may break the ice for other incremental innovations, which together may lead to a comprehensive solution. The debt crisis requires national and international responses on many fronts.[38] The Enterprise for the Americas Initiative carries debt-for-nature another step forward, and in doing so may come one step closer to a larger solution.

III. ENTERPRISE FOR THE AMERICAS INITIATIVE

Latin American nations owe the US Treasury approximately $12 billion. Easing the bilateral debt burden would be most beneficial to smaller Latin American countries that owe larger proportions of their external debts to bilateral official creditors.[39] Following the example of earlier privately funded debt-for-nature swaps, the United States has begun to swap bilateral official debt for environmental protection. The United States is in a position similar to that of a commercial bank holding develop-

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34. Diana Page, *Debt-for-Nature Swaps: Experience Gained, Lessons Learned*, 1 INT'L ENVTL. AFF. 275, 286 (1989).

35. Peter Passell, *Washington Offers Mountain of Debt to Save Forests*, N.Y. TIMES, Jan. 22, 1991, at C1.

36. Sylvia Saborio, *Bush's Latin American Initiative: A Reassuring Move*, CHRISTIAN SCIENCE MONITOR, July 12, 1990, at 8.

37. Reilly, *supra* note 1, at 136 (quoting Alvaro Umana, Costa Rica's Minister of Natural Resources, Energy, and Mines).

38. Konrad Von Moltke, *Debt-for-Nature: The Second Generation*, 14 HASTINGS INT'L & COMP. L. REV. 973, 974 (1991). "Debt-for-nature programs are part of this broader process. Indeed, they have been one of the engines of change." *Id.*

39. As of 1990, Latin American and Caribbean countries combined—those countries to which the Enterprise for the Americas Initiative is directed—had projected total external debts of $428 billion, and annual long-term debt service obligations of $35 billion. 1 WORLD DEBT TABLES, *supra* note 6, at 142. Jamaica is an example of a nation with a high percentage

ing country debt: it is not sure of being repaid. Therefore the United States is willing to write off and swap portions of the debt. Rather than being repaid in hard currency, the bilateral debt will be repaid in environmental protection.

President Bush announced the Enterprise for the Americas Initiative on June 27, 1990. The Initiative is a multifaceted program of economic measures aimed at Latin America, intended to send a signal that Latin American democracies will not be ignored in favor of Eastern Europe.[40] The plan has three main components: promotion of free trade, creation of new investment funds to encourage market-oriented reforms, and reduction of debt, partly through the use of debt-for-nature exchanges.[41]

The debt element of the Initiative would make seven billion dollars of bilateral official debt eligible for outright forgiveness on a case-by-case basis.[42] The remaining five billion dollars in bilateral debt would be used in debt-for-nature deals, as explained below, and could generate as much as $100 million a year for conservation projects.[43] The debt element of the Initiative was passed by Congress and signed into law effective January 1, 1991; however, rather than the $12 billion program proposed, Congress only authorized reduction of $1.7 billion in concessional food assistance debt.[44] If the initial transactions are successful, Congress may make more debt eligible for reduction.[45] The current version of the Initiative appears to be a pilot program with an open-ended future. Some of the terms of the legislation are modelled on the early debt-for-nature swaps. The following is a brief outline of the provisions of the debt element of the Initiative as enacted by Congress.

A. Legislative Purpose

The Initiative establishes the Enterprise for the Americas Facility within the Department of the Treasury.[46] The Facility is to administer debt

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of bilateral official debt. In 1989, of a total of $3.6 billion long-term external debt, it had $1.9 billion bilateral official debt. 2 WORLD DEBT TABLES, *supra* note 6, at 174.

40. Saborio, *supra* note 36, at 8.

41. *Gist: Enterprise for the Americas Initiative*, US Dep't of St. Dispatch (Sept. 2, 1991). For a discussion of the trade and investment elements of the Initiative, *see infra* Section V (Implementation).

42. Gene Gibbons, *Experts Split on Significance of Bush's LatAm Debt Initiative*, REUTERS, Dec. 17, 1990.

43. Passell, *supra* note 35.

44. Initiative, *supra* note 2. This food assistance debt is often referred to as "PL 480 debt."

45. The administration has requested authority to include Agency for International Development Loans in the program. *Debt-for-Nature Strategy Said To Remain Underused By Countries, Banks*, BNA WASH. INSIDER, May 13, 1991 (Nexis).

46. Initiative, *supra* note 2, § 1738.

reduction operations to eligible countries to support "market-oriented reforms and economic growth" and "to promote debt reduction, investment reforms, and community-based conservation and sustainable use of the environment."[47] Thus, the Initiative promotes a wider set of goals than simply environmental protection.

B. Eligibility

To help promote the Initiative's wider agenda of trade and investment reform as well as debt reduction, beneficiaries must meet a number of criteria. First, participation is limited to Latin American and Caribbean countries.[48] These countries must "meet investment reform and other policy conditions,"[49] including implementation of each of the following:

> A) an International Monetary Fund (IMF) structural adjustment program;
>
> B) a World Bank structural adjustment program or International Development Association loan;
>
> C) major investment reforms, resulting in significant progress towards an open investment regime; and
>
> D) agreements with commercial bank lenders on a financing program including debt or debt-service reduction.[50]

These eligibility criteria raise the question of whether, environmentally, the Initiative does more harm than good.[51] The requirement of IMF and World Bank structural adjustment programs means that the debtor country must agree to loans conditioned on broad policy and institutional reforms at the national level.[52] This may amount to major restructuring of Latin American economies, aimed at improved economic efficiency.

Such restructuring, in combination with open-investment policies, could itself have adverse environmental effects by promoting rapid extraction and export of natural resources.[53] Some Latin American NGOs have argued that conditioning debt reduction on structural adjustment programs forces their nations to adopt the same policies that have fostered unsustainable natural resource and environmental practices in the past.[54]

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47. *Id.* § 1738a.
48. *Id.* § 1738b(a)(1).
49. *Id.* § 1738a.
50. *Id.* § 1738b(a)(2).
51. HOUSE COMM. ON FOREIGN AFF., ENTERPRISE FOR THE AMERICAS INITIATIVE ACT OF 1990, H.R. REP. NO. 917, 101st Cong., 2d Sess. 3 (1990) [hereinafter COMMITTEE REPORT].
52. PLAYERS & ISSUES IN U.S. FOREIGN AID 30 (Elizabeth Morrison and Randall Purcell eds., 1988).
53. *Does Debt-for-Nature Plan Encourage Destructive Development?*, CHRISTIAN SCIENCE MONITOR, Apr. 10, 1991, at 20 (letter to the editor).
54. *Analysis: Debt for Nature or Children? or Both?*, GREENWIRE, Sept. 19, 1991. "'Latin American groups say the environment speck on this (Bush) initiative is the hair on the tail of the dog,' said National Wildlife Federation's Barbara Bramble, director of international programs." *Id.*

Therefore, Congress qualified these requirements. The IMF and World Bank structural adjustment programs are required only "as appropriate," after consideration of potential environmental and social impacts.[55]

C. Debt Reduction

As previously mentioned, only about $1.7 billion in concessional food assistance debt, known as PL 480 debt, was approved for reduction by Congress.[56] Although the program aimed at $12 billion in Latin American debt, the amount approved still represents a major increase in magnitude compared to the roughly $100 million involved in all previous debt-for-nature swaps.

The president may reduce the amount a country owes to the United States upon determining that the eligibility criteria have been met.[57] Payments of the remaining principal will continue to be repaid in US dollars.[58] Until the debtor country enters into an Environmental Framework Agreement with the US, interest must continue to be repaid in US dollars also. When such an agreement is reached, however, the debtor country gets the payoff: interest payments can be made in local currency into an Environmental Fund.[59]

D. Environmental Framework Agreements

Each eligible country is required to enter into an Environmental Framework Agreement with the US.[60] Under such an agreement, the country must: establish an Environmental Fund, make interest payments into the fund in local currency, make disbursements from the fund to an Administering Body, maintain the value of the fund in terms of US dollars, specify purposes for which the fund may be used in accordance with Initiative provisions, and establish reasonable provisions for enforcement of the agreement.[61] These detailed requirements may seem excessive, but they establish the framework for both current and future debt reduction. If additional debt becomes available for reduction, the necessary institutional mechanisms will already exist to take advantage of it.[62]

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55. COMMITTEE REPORT, *supra* note 51, at 3. "In the event that a country has not yet met these requirements, the United States should consider potential environmental and social impacts in determining whether the requirements are appropriate. These requirements should be deemed inappropriate where evidence exists that a proposed World Bank or IMF adjustment program has significant adverse social or environmental impacts." *Id.*

56. Von Moltke, *supra* note 38, at 985.

57. Initiative, *supra* note 2, §§ 1738c(a), 1738b(b).

58. *Id.* § 1738d.

59. *Id.* § 1738e(b).

60. *Id.* § 1738f(a).

61. *Id.* § 1738f(b).

62. Von Moltke, *supra* note 38, at 985.

The "reasonable provisions for enforcement" should assure that the US government gets what it bargains for, while allowing the eligible country some influence as to the form such enforcement provisions will take. As of this writing, no Environmental Framework Agreements have been signed. However, by the terms of an executive order implementing the Initiative, the US will not enter into certain other trade and credit arrangements with countries in default on debts reduced under the Initiative.[63] In addition to any enforcement provisions contained in the agreements, participating countries will have an incentive to honor their obligations in order to be eligible for participation in additional debt reduction in the future. It does appear, though, that once a country has met the eligibility criteria, any actual debt forgiveness is permanent, whether or not the country complies with its Environmental Framework Agreement.

E. Administering Body

In its operational provisions, the Initiative clearly reflects lessons learned from the experience of privately funded debt-for-nature swaps. Chief among these lessons is that the debtor country's local NGOs can be used to insulate environmental spending decisions from undue influence by either the debtor country's government or the creditor. This helps strike the crucial balance between competing desires for sovereignty on one hand and enforceability on the other; this balance is especially critical where the creditor is another sovereign government, because perceptions of economic imperialism could easily arise.

Adhering to the idea of local control of environmental programs, the debtor country agrees to disburse money from the Environmental Fund to an Administering Body. The Administering Body includes representatives appointed by the US government and representatives appointed by the debtor country's government, but it must have a majority of "local representatives from nongovernmental organizations, and scientific or academic bodies."[64] Thus, local NGOs, rather than government representatives, control most aspects of the Administering Body.

The Administering Body has primary management and oversight responsibility and is responsible for granting money to eligible organizations for activities specified in the Initiative.[65] Its autonomy has limits, however; any grant over $100,000 can be vetoed by either the US or the debtor country.[66]

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63. Exec. Order No. 12757, 3 C.F.R. 12107 (1991), *reprinted in* 7 U.S.C.A. § 1738 (1991).

64. Initiative, *supra* note 2, § 1738f(c).

65. *Id.*

66. *Id.* § 1738f(c)(7).

F. Environment for the Americas Board

The Initiative creates an advisory board, called the Environment for the Americas Board ("Board"). The Board is to be composed of five US government representatives and four representatives from environmental, community development, scientific, and academic NGOs.[67] The Board will advise the President in negotiating Environmental Framework Agreements and in appointing members of Administering Bodies. Each Administering Body is required to submit an annual program and report of its activities and an annual independent fiscal audit. The Board is responsible for reviewing these reports.[68] The Board gives the US government an additional check on the activities of Administering Bodies, but it has no specific enforcement power.

G. Eligible Grantees

The Administering Body may make grants to the following entities:

> 1) host country nongovernmental environmental, conservation, development, educational, and indigenous people's organizations;
>
> 2) other appropriate local or regional entities; or
>
> 3) in exceptional circumstances, the government of the eligible country.[69]

This provision reflects the intent that local NGOs ultimately spend the money generated by the Initiative. Indigenous people's groups are listed specifically as possible recipients of funds; this should help them to be heard on development and conservation issues. The Administering Body should always be aware of the potential for conflict with the interests of indigenous peoples. One way to ensure such awareness would be to have at least one representative of such groups on the Administering Body, at least in countries containing substantial indigenous populations.

The "exceptional circumstances" provision for grants to the government of an eligible country anticipates that in some countries, local NGOs may not be large enough or experienced enough to carry out major programs under the Initiative. In that case, grants can be made to the government until local NGOs develop.[70]

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67. *Id.* § 1738i. The US government contingent will include representatives from Treasury, the Agency for International Development, and the Inter-American Development Foundation. Treasury will chair the Board. COMMITTEE REPORT, *supra* note 51, at 5.

68. Initiative, *supra* note 2, § 1738f(c)(4)-(6).

69. *Id.* § 1738k(d).

70. COMMITTEE REPORT, *supra* note 51, at 5.

H. Eligible Activities

A wide variety of activities are eligible for grants from the Administering Body. The Initiative specifies the following:

> 1) activities of the type described in the Global Environmental Protection Assistance Act of 1989 (22 U.S.C. 462);
>
> 2) agriculture-related activities... to benefit the environment; and
>
> 3) local community initiatives that promote conservation and sustainable use of the environment.[71]

The activities referred to in the Global Environmental Protection Assistance Act include:

> (1) restoration, protection, or sustainable use of the world's oceans and atmosphere;
>
> (2) restoration, protection, or sustainable use of diverse animal and plant species;
>
> (3) establishment, restoration, protection, and maintenance of parks and reserves;
>
> (4) development and implementation of sound systems of natural resource management;
>
> (5) development and support of local conservation programs;
>
> (6) training programs to strengthen conservation institutions and increase scientific, technical, and managerial capabilities of individuals and organizations involved in conservation efforts;
>
> (7) efforts to generate knowledge, increase understanding, and enhance public commitment to conservation;
>
> (8) design and implementation of sound programs of land and ecosystem management; and
>
> (9) promotion of regenerative approaches in farming, forestry, fishing, and watershed management.[72]

Administering Bodies, then, can award grants for a broad range of activities, from outright conservation to education, agriculture, and sustainable-development projects. The basic idea of the provisions for eligible grantees and activities is that funds be spent by local NGOs for grassroots environmental projects. The Administering Body is to give priority to projects that are run by NGOs or other private entities and that involve local communities in planning and execution.[73] This is another provision that could help protect the interests of indigenous people's groups, who are one form of "local community."

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71. Initiative, *supra* note 2, § 1738k(a).

72. Global Environmental Protection Assistance Act, 22 U.S.C. § 2283 (1989). This statute allows the US Agency for International Development to grant money to conservation NGOs to participate in commercial debt-for-nature swaps.

73. Initiative, *supra* note 2, § 1738k(e).

I. Encouraging Multilateral Debt Donations

The Initiative provides that the President "should" actively encourage other official creditors of an eligible country to provide debt reduction.[74] This is not such a farfetched idea; the Initiative itself followed the example of earlier private debt-for-nature agreements. Latin American governments owe Europe and Japan $38 billion, and these official creditors may follow the lead of the US.[75] If they do, the benefits of the Initiative will be multiplied: environmental funding will dramatically increase and the debt crisis will be eased by another small degree.

World Bank and other MDBs typically do not reschedule debts owed to them for two reasons: they are prevented by their charters from doing so, and rescheduling could harm their credit ratings on international credit markets.[76] However, some debts are finally written off if the debtor country cannot pay. In these cases, the MDB could instead require repayment in local currency which could be used in local conservation projects—essentially what the Initiative does with bilateral debt.[77] Benefits from this practice would flow to countries that owe large proportions of their debt to MDBs, such as countries in sub-Saharan Africa.[78] Even if MDBs do not directly reduce debts owed to them, they can provide money to finance commercial debt-for-nature swaps.[79] Also, it is important to note that the Initiative encourages debt reduction overall, not just in the form of debt-for-nature swaps.

IV. IMPLEMENTATION

So far, three countries have made debt-reduction agreements under the Initiative. The first debt reduction came on June 27, 1991, the first anniversary of the announcement of the Initiative. Chile's $39.3 million in food-assistance debt was reduced by $15.7 million. Interest on the remaining $23.6 million is to be used for environmental funding.[80] The same day,

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74. *Id.* § 1738*l*.

75. Passell, *supra* note 35, at 1.

76. Derek Asiedu-Akrofi, *Debt-for-Nature Swaps: Extending the Frontiers of Innovative Financing in Support of the Global Environment*, 25 INT'L LAW. 557, 583 (1991). *See also* Stein Hansen, *Debt-for-Nature Swaps: Overview and Discussion of Key Issues* 13-15 (Feb. 1988) (World Bank Environment Department Working Paper No. 1).

77. Aseidu-Akrofi, *supra* note 76, at 583.

78. 1 WORLD DEBT TABLES, *supra* note 6, at 89.

79. Alvaro Umana Quesada, *Banks, Debt, and Development I*, 2 INT'L ENVTL. AFF. 140, 147 (1990).

80. Lauren Weiner, *Bush Forgives $15 Million in Debts to Reward Chile*, WASHINGTON TIMES, June 28, 1991, at A8. As of 1989, Chile had total external debts of $18.24 billion, with annual long-term debt service obligations of $2.1 billion. 2 WORLD DEBT TABLES, *supra* note 6, at 62.

the Inter-American Development Bank approved a $150 million loan to help Chile reform its investment policies.[81]

On August 22, 1991, an agreement with Bolivia was announced. The deal involved forgiveness of $341 million owed to the US Agency for International Development, as well as an 80 percent reduction in PL 480 debt. About $200,000 a year in interest on the remaining PL 480 debt will be paid into an Environmental Fund in local currency. In addition, Bolivia voluntarily agreed to provide $20 million in environmental funding over the next 10 years.[82] The funds will be used for five major purposes: sustainable use of renewable natural resources, comprehensive basin management of rivers and streams, research and education on species and ecosystems, management of protected areas and protection of biodiversity, and development of communities associated with environmental programs.[83]

On August 23, 1991, the US and Jamaica reached an agreement that canceled $217 million of official debt and rescheduled another $54 million. Upon establishment of an Environmental Fund, Jamaica can begin paying the interest on the rescheduled debt into the fund in local currency. It will support Jamaica's new national park system and other projects.[84]

Implementation of the debt relief component will entail costs to the US budget. Under the Initiative, payments to the US Treasury from eligible countries are meant to remain at their expected levels. This is to be achieved by accelerating repayment of loan principal. If, for example, a country is now paying $1 million in principal and $4 million in interest each year, it would continue to pay $5 million each year. The whole $5 million, however, would count as payment of principal, while $4 million in local currency would be paid into a local Environmental Fund. This would allow the debtor country to pay off the balance of the debt much faster.[85] The US would not receive the interest payments, but it would get the principal back and could re-invest the money elsewhere. However, the

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81. *US Cuts Chile's Official Debt, IDB Makes Loan for Investment Reform*, Daily Rep. for Executives (BNA), No. 125, at A10 (June 28, 1991).

82. *Debt Deal: Landmark Accord Will Fund Preservation in Bolivia*, GREENWIRE, Aug. 29, 1991 [hereinafter *Debt Deal*]. *As of 1989, Bolivia had total external debts of $4.36 billion, with annual long-term debt service obligations of $235 million.* 2 WORLD DEBT TABLES, *supra* note 6, at 26.

83. *Debt Deal*, *supra* note 82.

84. *Jamaica's Debt Cut by US*, N.Y. TIMES, Aug. 24, 1991, at 50. As of 1989, Jamaica had total external debts of $4.32 billion, with annual long-term debt service obligations of $382 million. 2 WORLD DEBT TABLES, *supra* note 6, at 174. About 40 percent of Jamaica's external debt is owed to the US government. 137 CONG. REC. El. 39251, (daily ed. Nov. 20, 1991) (statement of Rep. Rangel).

85. Passell, *supra* note 35.

present value of the reduced debts would still be less than the present value of existing loans; long-term budget costs are hard to estimate, but could be substantial.[86]

The trade and investment components of the Initiative are being pursued through different means. The trade goal of the Initiative is the creation of a hemisphere-wide free trade area.[87] To this end, the US has pursued free trade agreements with Mexico and Canada, and has signed bilateral framework agreements with many Latin American nations. Such framework agreements do not themselves establish free trade regimes; rather, they are intended to facilitate future free trade agreements.[88]

The US is pursuing the investment-reform component of the Initiative with two proposals aimed at changes in Latin American investment regimes.[89] First, a Multilateral Investment Fund with contributions from the US, Japan, and other nations has been proposed to provide $1.5 billion over five years. The Fund would make grants in three broad areas: advancement of specific, market-oriented investment policy initiatives and reforms; technical assistance for privatization, infrastructure, and worker education and training; and financing of small businesses.[90] Second, an investment sector lending program by the Inter-American Development Bank has begun with the $150 million loan to Chile.[91] As mentioned previously, open-investment requirements and other economic measures also have found their way into the eligibility provisions of the Initiative's debt component.

The free trade, investment reform, and structural adjustment aspects of the Initiative present a paradox. On one hand, developing countries may attract investment in "pollution-intensive" industries, because they usually impose less stringent environmental standards than industrial countries. The costs of pollution often are not reflected in the price of export products, but instead are externalized in the form of damage to human health,

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86. COMMITTEE REPORT, *supra* note 51, at 7 (Congressional Budget Office cost estimate).

87. Carrie B. Clark, *The Enterprise for the Americas Initiative: Supporting a "Silent Revolution" in Latin America*, BUS. AM., Sept. 23, 1991, at 6.

88. *Id.* The US has signed framework agreements with Colombia, Ecuador, Chile, Honduras, Costa Rica, Venezuela, El Salvador, Peru, Panama, Nicaragua, MERCOSUR (a trading coalition composed of Argentina, Brazil, Uruguay, and Paraguay), and CARICOM (consisting of Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent, and the Grenadines). Similar agreements were signed with Mexico and Bolivia before creation of the Initiative, and others are being pursued.

89. *Id.*

90. *Id.*

91. *Id.*

property, and the environment.[92] On the other hand, foreign trade is essential to the prosperity of developing countries.[93] Moreover, without investment in industry and manufacturing, it will be difficult for developing countries to find alternatives to the depletion of their natural resources for export commodities.[94] Environmental and resource protection requires the reduction of poverty. The reduction of poverty requires economic recovery, but economic recovery can have environmentally harmful effects.

Perhaps it is unrealistic to expect developing countries to discourage investment by implementing tougher environmental standards. However, it would be ironic indeed for the US to recognize the links between environmental and economic goals in the Initiative, and then pursue these goals in a categorized, segmented fashion. The trade and investment policies restructured under the Initiative must include adequate safeguards for the environment, otherwise the integrated approach it seems to take will be illusory.

V. CONCLUSION

The Initiative succeeds in assimilating many key elements of private debt-for-nature swaps. It addresses the inherent tension between enforceability and sovereignty by vesting most environmental program authority in local NGOs, while providing for enforceability in Environmental Framework Agreements. It partly addresses concerns about conflict with indigenous people by specifically authorizing grants to indigenous people's groups, and by giving priority to projects that encourage local community participation.

The Initiative builds on the foundation of privately funded debt-for-nature swaps by dramatically increasing the amount of money involved in debt-for-nature agreements. It goes a long way toward addressing one of the environmental problems caused by the debt crisis: the inability of debtor countries to fund domestic environmental programs. It cannot truly be said to solve the other, much greater problem: the pressure that external debt puts on a country to exploit and export its natural resources. Even in this regard, however, relatively small amounts of money can help, at least for certain countries. "The individual situations of debtor countries are quite different: in some cases the entire debt is at issue and in other

92. OUR COMMON FUTURE, *supra* note 5, at 83-84.
93. *Id.* at 75.
94. *Id.* at 79.

countries a five percent reduction of the interest rates would stabilize the debt situation."[95] Rather than taking on the entire $1.3 trillion debt crisis, the Initiative can be used to make noticeable differences on a less ambitious scale.

Authority to reduce PL 480 debt is only a beginning; if the initial Environmental Funds are successful, Congress may allow more official debt to be reduced under the Initiative.[96] Governments in Europe and Japan may follow suit, and MDBs may find a way to participate in debt reduction. The Initiative, then, has done a creditable job of advancing debt-for-nature swaps a step forward in their evolution.

One step forward could be accompanied by two steps back if the two other main components of the Initiative—free trade and investment reform—are allowed to proceed without adequate consideration of environmental values and sustainability. The eligibility criteria for countries in § 1738b of the Initiative provide an example of how economic growth can collide with environmental goals.[97] In what could be a preview of future free-trade controversies, many environmental organizations oppose the US-Mexico free trade agreement now being negotiated.[98] The same opposition could extend to Latin American and Caribbean free trade agreements.

To address this kind of fear, it is essential that the US not pursue economic development and environmental policy in a compartmentalized fashion. Instead of sending two huge bulldozers labelled "Trade" and "Investment" charging through the Latin American countryside, followed by a small wheelbarrow labelled "Environmental Protection," the US must promote development policies that tread lightly and incorporate environmental considerations in the first place. Not only does development affect the prospects for environmental integrity, the environment affects the prospects for economic development. The US must take a unified rather than a segmented approach to the debt, development, and environmental problems of Latin America.

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95. Henner Ehringhaus, *Introduction, European Conference on Debt and Conservation: November 2-3, 1989*, 2 INT'L ENVTL. AFF. 130, 132 (1990).

96. In fact, a much more ambitious official debt-for-nature bill has been introduced in the US Senate. *See generally* International Economic and Environmental Improvement Act of 1991, S. 1124, 102d Cong., 1st Sess. (1991). This legislation would extend debt reduction to all debtor nations, not just those in Latin America. It would allow 20 percent of the debt owed to the US government to be paid in local currency into an environmental trust fund.

97. *Does Debt-for-Nature Plan Encourage...*, *supra* note 53.

98. Stephen S. Rosenfeld, *Green Dilemmas*, WASH. POST, Feb. 7, 1992, at A25.

Perhaps the largest contribution of debt-for-nature swaps in general, and of the Initiative in particular, is that they so clearly link debt, development, and environmental problems in the public eye. By shedding light on the real effects of the debt crisis, debt-for-nature can help build a consensus that a comprehensive solution to the crisis is needed. Finally, such a consensus may translate into the political will to actually make fundamental changes, to the benefit of people in debtor countries and throughout the world. "A series of small steps trying to link debt and conservation is badly needed if results at a larger scale are ever to be obtained."[99] The Enterprise for the Americas Initiative is one such step.

Douglas Logsdon

99. Carlo Jaeger, *Debt, Conservation, and Sustainable Development*, 2 INT'L ENVTL. AFF. 166, 169 (1990).